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of the State of California
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the First Amended Accusation
11 and Petition to Revoke Probation Against:

12 SHERI LOLENE ROSE
aka SHERI LOLENE SMITH
13 4126 East Laurel Avenue
Visalia, CA 93292
14 Registered Nurse License No. 648109,

15
16 Respondent.

Case No. 2008-173

**FIRST AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

17
18 Complainant alleges:

19 PARTIES

- 20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this First
21 Amended Accusation solely in her official capacity as the Executive Officer of the Board of
22 Registered Nursing (Board), Department of Consumer Affairs.
- 23 2. On or about November 17, 2004, the Board issued Registered Nurse
24 License Number 648109 to Sheri Lolene Rose, also known as Sheri Lolene Smith (Respondent).
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on August 31, 2008, unless renewed.

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3. This First Amended Accusation is brought before the Board under the following laws. All section references are to the Business and Professions Code as indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in part, that the Board may discipline any licensee, including a licensee holding a suspended or inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or
 a person applying for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed
ons."

6. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences into applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical behavior, and through interpretation of information obtained from the client and the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct nursing care services provide for the client's safety, comfort, hygiene, and and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains treatment to the client and family and teaches the client and family how to care for the needs.

1 "(4) Delegates tasks to subordinates based on the legal scopes of practice of the
2 subordinates and on the preparation and capability needed in the tasks to be delegated, and
3 effectively supervises nursing care being given by subordinates.

4 "(5) Evaluates the effectiveness of the care plan through observation of the
5 client's physical condition and behavior, signs and symptoms of illness, and reactions to
6 treatment and through communication with the client and health team members, and modifies the
7 plan as needed.

8 "(6) Acts as the client's advocate, as circumstances require, by initiating action to
9 improve health care or to change decisions or activities which are against the interests or wishes
10 of the client, and by giving the client the opportunity to make informed decisions about health
11 care before it is provided."

12 7. Section 125.3 of the Code provides, in pertinent part, that the Board may
13 request the administrative law judge to direct a licentiate found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case.

16 PROBATION TERMS AND CONDITIONS

17 8. On or about June 13, 2001, the Board received an application for
18 Registered Nurse License from Respondent. Respondent's application was denied, and a
19 Statement of Issues was filed in Board Case No. 2003-295. On or about October 12, 2004, the
20 Board entered into a Stipulated Settlement and Disciplinary Order with the Respondent.
21 Pursuant to the Stipulated Settlement and Disciplinary Order in Statement of Issues Case No.
22 2003-295, Respondent was issued Registered Nurse License No. 648109. However, the license
23 was immediately revoked, stayed, and Respondent was placed on three (3) years probation
24 subject to terms and conditions. The Final Decision and Order of the Board became effective on
25 or about November 11, 2004. Among others, the probation included the following terms and
26 conditions:

27 "1 **Obey all Laws.** Respondent shall obey all federal, state and local laws..."

28 \\

“2 **Comply with the Board’s Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent’s compliance with the Board’s Probation Program...”

“11 **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent’s license. If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent’s license or the Attorney General’s Office has been requested to prepare an accusation or petition to revoke probation against Respondent’s license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.”

“15 Abstain from Use of Psychotropic (Mood-Altering) Drugs. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medications, dosage, and date the medication was prescribed, the Respondent’s prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistance to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.”

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence - Medication Error)

9. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(1), in conjunction with California Code of Regulations, title 16, section 1443.5, on the grounds of unprofessional conduct, in that Respondent committed an act of gross negligence, and/or incompetence, as follows:

///

1 a. On or about June 6, 2007, Respondent made a medication error while
2 caring for patients at the Delano Regional Care Center. Respondent administered medication to
3 the wrong patient, violating one of the "5 Rights" of nurse administration of medication.
4 Respondent admitted the medication error to her probation monitor on or about June 12, 2007.

5 FIRST CAUSE TO REVOKE PROBATION

6 10. Respondent violated term and condition 1 of her probation, in that
7 Respondent violated the laws of the state related to the practice of registered nursing by
8 committing unprofessional conduct in the form of gross negligence, and/or, incompetence when
9 she made a medication error, as more fully discussed in paragraph 9, above.

10 SECOND CAUSE TO REVOKE PROBATION

11 11. Respondent violated terms and conditions 2 and 15 of her probation, in
12 that Respondent failed to comply and cooperate with the Board's Probation Program while on
13 probation as follows:

14 a. Respondent tested positive for prescription medications, specifically,
15 Tramadol during her Random Biological Fluid Testings between August 2006 and April 2007
16 and failed to have sent to the Board, in writing and within fourteen (14) days, by a prescribing
17 health professional, a report identifying Tramadol as a medication prescribed to Respondent, its
18 dosage, the date the medication was prescribed, Respondent's prognosis, and the date the
19 medication would no longer be required. A letter from Respondent's health care professional
20 addressing Respondent's prescription for Tramadol was not received until on or about April 4,
21 2007.

22 b. Respondent's Random Biological Fluid Testing results were out of range
23 on or about June 2, 2005, June 22, 2005, August 16, 2005, September 28, 2005, November 22,
24 2005, August 17, 2006 and June 7, 2007; and, Respondent's results were diluted on or about
25 April 19, 2006, and May 16, 2006. On or about July 31, 2006, Respondent was advised by her
26 probation monitor to see her physician regarding the out of range and diluted results, and to have
27 the health care professional send the probation monitor a letter regarding the results. Respondent
28 failed to have a letter sent by her health care professional until on or about April 4, 2007.

1 c. Respondent tested positive for Ethylglucuronide (Alcohol) on or about
2 November 8, 2006 and May 17, 2007.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board issue a decision:

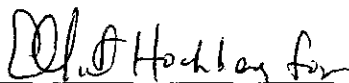
6 1. Revoking or suspending Registered Nurse License Number 648109,
7 issued to Sheri Lolene Rose, also known as Sheri Lolene Smith;

8 2. Revoking the probation that was granted by the Board of Registered
9 Nursing in Case No. 2003-295, and imposing the disciplinary order that was stayed thereby
10 revoking Registered Nurse License Number 648109, issued to Sheri Lolene Rose, also known as
11 Sheri Lolene Smith;

12 3. Ordering Sheri Lolene Rose, also known as Sheri Lolene Smith, to pay the
13 Board the reasonable costs of the investigation and enforcement of this case, pursuant to
14 Business and Professions Code section 125.3;

15 4. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 2/15/08

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19 
20 Ruth Ann Terry, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 State of California
24 Complainant

25 LA2007601729

26 First Amended Accusation.Rose.Sheri.wpd
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JURISDICTION

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"(a) Unprofessional conduct, which includes, but is not limited to, the following:

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27 "1 **Obey all Laws.** Respondent shall obey all federal, state and local laws..."

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15 Tramadol during her Random Biological Fluid Testings between August 2006 and April 2007
16 and failed to have sent to the Board, in writing and within fourteen (14) days, by a prescribing
17 health professional, a report identifying Tramadol as a medication prescribed to Respondent, its
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21 2007.

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28 failed to have a letter sent by her health care professional until on or about April 4, 2007.

1 c. Respondent tested positive for Ethylglucuronide (Alcohol) on or about
2 November 8, 2006 and May 17, 2007.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board issue a decision:

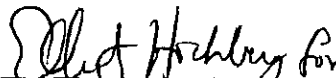
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8 2. Revoking the probation that was granted by the Board of Registered
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11 Sheri Lolene Smith;

12 3. Ordering Sheri Lolene Rose, also known as Sheri Lolene Smith, to pay the
13 Board the reasonable costs of the investigation and enforcement of this case, pursuant to
14 Business and Professions Code section 125.3;

15 4. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 12/5/07

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19 
20 Ruth Ann Terry, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 State of California
24 Complainant

25 LA2007601729

26 60251228.wpd

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SHERI LOLENE SMITH
a.k.a., Sheri Lolene Rose,
a.k.a., Sheri Lolene Gabbert
a.k.a., Wendy Lynn Peterson
a.k.a., Lolly Smith
a.k.a., Lola Smith
4126 E. Laurel Ave.
Visalia, CA 93292

Respondent

Case No. 2003-295

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on November 11, 2004.

IT IS SO ORDERED October 12, 2004

Sandra H. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 TERRENCE M. MASON, State Bar No. 158935
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-6294
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues Against:

Case No. 2003-295

11 SHERI LOLENE SMITH,
a.k.a., Sheri Lolene Rose,
12 a.k.a., Sheri Lolene Gabbert,
a.k.a., Wendy Lynn Peterson,
13 a.k.a., Lolly Smith,
a.k.a., Lola Smith
14 4126 E. Laurel Ave.
Visalia, CA 93292

OAH No. L-2004020187

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
22 the Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Bill Lockyer, Attorney General of the State of California, by
24 Terrence M. Mason, Deputy Attorney General.

25 2. Sheri Lolene Smith, a.k.a. Sheri Lolene Rose (Respondent) is representing
26 herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

27 3. On or about June 13, 2001, the Board of Registered Nursing received an
28 application for a Registered Nurse License¹ from Sheri Lolene Smith (Respondent). The Board

1 denied the application on September 5, 2002.

2 JURISDICTION

3 4. Statement of Issues No. 2003-295 was filed before the Board of Registered
4 Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent.
5 The Statement of Issues and all other statutorily required documents were properly served on
6 Respondent on June 30, 2003. Respondent timely filed her Notice of Defense contesting the
7 Statement of Issues. A copy of Statement of Issues No. 2003-295 is attached as Exhibit A and
8 incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations
11 in Statement of Issues No. 2003-295. Respondent has also carefully read, and understands the
12 effects of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Statement of Issues; the right to be
15 represented by counsel at her own expense; the right to confront and cross-examine the witnesses
16 against her; the right to present evidence and to testify on her own behalf; the right to the
17 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
18 the right to reconsideration and court review of an adverse decision; and all other rights accorded
19 by the California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Statement of Issues No. 2003-295.

25 9. Respondent agrees that her application for a Registered Nurse License is
26 subject to denial and she agrees to be bound by the Board's imposition of discipline as set forth in
27 the Disciplinary Order below.

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unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or

1 returning to practice in this state.

2 Respondent shall provide a list of all states and territories where she has ever been
3 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
4 provide information regarding the status of each license and any changes in such license status
5 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
6 new nursing license during the term of probation.

7 5. **Submit Written Reports.** Respondent, during the period of probation,
8 shall submit or cause to be submitted such written reports/declarations and verification of actions
9 under penalty of perjury, as required by the Board. These reports/declarations shall contain
10 statements relative to Respondent's compliance with all the conditions of the Board's Probation
11 Program. Respondent shall immediately execute all release of information forms as may be
12 required by the Board or its representatives.

13 Respondent shall provide a copy of this Decision to the nursing regulatory agency
14 in every state and territory in which she has a registered nurse license.

15 6. **Function as a Registered Nurse.** Respondent, during the period of
16 probation, shall engage in the practice of registered nursing in California for a minimum of 24
17 hours per week for 6 consecutive months or as determined by the Board.

18 For purposes of compliance with the section, "engage in the practice of registered
19 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
20 work in any non-direct patient care position that requires licensure as a registered nurse.

21 The Board may require that advanced practice nurses engage in advanced practice
22 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
23 Board.

24 If Respondent has not complied with this condition during the probationary term,
25 and Respondent has presented sufficient documentation of her good faith efforts to comply with
26 this condition, and if no other conditions have been violated, the Board, in its discretion, may
27 grant an extension of Respondent's probation period up to one year without further hearing in
28 order to comply with this condition. During the one year extension, all original conditions of

1 probation shall apply.

2 **7. Employment Approval and Reporting Requirements.** Respondent
3 shall obtain prior approval from the Board before commencing or continuing any employment,
4 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
5 performance evaluations and other employment related reports as a registered nurse upon request
6 of the Board.

7 Respondent shall provide a copy of this Decision to her employer and immediate
8 supervisors prior to commencement of any nursing or other health care related employment.

9 In addition to the above, Respondent shall notify the Board in writing within
10 seventy-two (72) hours after she obtains any nursing or other health care related employment.
11 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
12 terminated or separated, regardless of cause, from any nursing, or other health care related
13 employment with a full explanation of the circumstances surrounding the termination or
14 separation.

15 **8. Supervision.** Respondent shall obtain prior approval from the Board
16 regarding Respondent's level of supervision and/or collaboration before commencing or
17 continuing any employment as a registered nurse, or education and training that includes patient
18 care.

19 Respondent shall practice only under the direct supervision of a registered nurse
20 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
21 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
22 are approved.

23 Respondent's level of supervision and/or collaboration may include, but is not
24 limited to the following:

25 (a) Maximum - The individual providing supervision and/or collaboration is
26 present in the patient care area or in any other work setting at all times.

27 (b) Moderate - The individual providing supervision and/or collaboration is in
28 the patient care unit or in any other work setting at least half the hours Respondent works.

1 (c) Minimum - The individual providing supervision and/or collaboration has
2 person-to-person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care - If Respondent is approved to work in the home health
4 care setting, the individual providing supervision and/or collaboration shall have person-to-
5 person communication with Respondent as required by the Board each work day. Respondent
6 shall maintain telephone or other telecommunication contact with the individual providing
7 supervision and/or collaboration as required by the Board during each work day. The individual
8 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
9 site visits to patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's
11 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
12 traveling nurse, or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse
14 unless the registered nursing supervision and other protections for home visits have been
15 approved by the Board. Respondent shall not work in any other registered nursing occupation
16 where home visits are required.

17 Respondent shall not work in any health care setting as a supervisor of registered
18 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
19 nurses and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing
21 or as an instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the
25 Board may request documentation to determine whether there should be restrictions on the hours
26 of work.

27 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
28 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later

1 than six months prior to the end of her probationary term.

2 Respondent shall obtain prior approval from the Board before enrolling in the
3 course(s). Respondent shall submit to the Board the original transcripts or certificates of
4 completion for the above required course(s). The Board shall return the original documents to
5 Respondent after photocopying them for its records.

6 11. **Violation of Probation.** If Respondent violates the conditions of her
7 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
8 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
9 license.

10 If during the period of probation, an accusation or petition to revoke probation has
11 been filed against Respondent's license or the Attorney General's Office has been requested to
12 prepare an accusation or petition to revoke probation against Respondent's license, the
13 probationary period shall automatically be extended and shall not expire until the accusation or
14 petition has been acted upon by the Board.

15 12. **License Surrender.** During Respondent's term of probation, if she ceases
16 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
17 probation, Respondent may surrender her license to the Board. The Board reserves the right to
18 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
19 take any other action deemed appropriate and reasonable under the circumstances, without
20 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
21 will no longer be subject to the conditions of probation.

22 Surrender of Respondent's license shall be considered a disciplinary action and
23 shall become a part of Respondent's license history with the Board. A registered nurse whose
24 license has been surrendered may petition the Board for reinstatement no sooner than the
25 following minimum periods from the effective date of the disciplinary decision:

26 (1) Two years for reinstatement of a license that was surrendered for any
27 reason other than a mental or physical illness; or

28 (2) One year for a license surrendered for a mental or physical illness.

1 13. **Physical Examination.** Within 45 days of the effective date of this
2 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
3 physician assistant, who is approved by the Board before the assessment is performed, submit an
4 assessment of the Respondent's physical condition and capability to perform the duties of a
5 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
6 medically determined, a recommended treatment program will be instituted and followed by the
7 Respondent with the physician, nurse practitioner, or physician assistant providing written
8 reports to the Board on forms provided by the Board.

9 If Respondent is determined to be unable to practice safely as a registered nurse,
10 the licensed physician, nurse practitioner, or physician assistant making this determination shall
11 immediately notify the Board and Respondent by telephone, and the Board shall request that the
12 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
13 shall immediately cease practice and shall not resume practice until notified by the Board.
14 During this period of suspension, Respondent shall not engage in any practice for which a license
15 issued by the Board is required until the Board has notified Respondent that a medical
16 determination permits Respondent to resume practice. This period of suspension will not apply
17 to the reduction of this probationary time period.

18 If Respondent fails to have the above assessment submitted to the Board within
19 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
20 practice until notified by the Board. This period of suspension will not apply to the reduction of
21 this probationary time period. The Board may waive or postpone this suspension only if
22 significant, documented evidence of mitigation is provided. Such evidence must establish good
23 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
24 provided. Only one such waiver or extension may be permitted.

25 14. **Participate in Treatment/Rehabilitation Program for Chemical**
26 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
27 period or shall have successfully completed prior to commencement of probation a Board-
28 approved treatment/rehabilitation program of at least six months duration. As required, reports

1 shall be submitted by the program on forms provided by the Board. If Respondent has not
2 completed a Board-approved treatment/rehabilitation program prior to commencement of
3 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
4 a program. If a program is not successfully completed within the first nine months of probation,
5 the Board shall consider Respondent in violation of probation.

6 Based on Board recommendation, each week Respondent shall be required to
7 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
8 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
9 by the Board. If a nurse support group is not available, an additional 12-step meeting or
10 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
11 such attendance to the Board during the entire period of probation. Respondent shall continue
12 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
13 mental health examiner and/or other ongoing recovery groups.

14 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
15 shall completely abstain from the possession, injection or consumption by any route of all
16 psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a
17 health care professional legally authorized to do so as part of documented medical treatment.
18 Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the
19 prescribing health professional, a report identifying the medication, dosage, the date the
20 medication was prescribed, the Respondent's prognosis, the date the medication will no longer
21 be required, and the effect on the recovery plan, if appropriate.

22 Respondent shall identify for the Board a single physician, nurse practitioner or
23 physician assistant who shall be aware of Respondent's history of substance abuse and will
24 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
25 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
26 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
27 condition. If any substances considered addictive have been prescribed, the report shall identify a
28 program for the time limited use of any such substances.

1 The Board may require the single coordinating physician, nurse practitioner, or
2 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
3 addictive medicine.

4 **16. Submit to Tests and Samples.** Respondent, at her expense, shall
5 participate in a random, biological fluid testing or a drug screening program which the Board
6 approves. The length of time and frequency will be subject to approval by the Board.
7 Respondent is responsible for keeping the Board informed of Respondent's current telephone
8 number at all times. Respondent shall also ensure that messages may be left at the telephone
9 number when she is not available and ensure that reports are submitted directly by the testing
10 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
11 to the Board by the program and Respondent shall be considered in violation of probation.

12 In addition, Respondent, at any time during the period of probation, shall fully
13 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
14 tests and samples as the Board or its representatives may require for the detection of alcohol,
15 narcotics, hypnotics, dangerous drugs, or other controlled substances.

16 If Respondent has a positive drug screen for any substance not legally authorized
17 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
18 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
19 from practice pending the final decision on the petition to revoke probation or the accusation.
20 This period of suspension will not apply to the reduction of this probationary time period.

21 If Respondent fails to participate in a random, biological fluid testing or drug
22 screening program within the specified time frame, Respondent shall immediately cease practice
23 and shall not resume practice until notified by the Board. After taking into account documented
24 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
25 Board may suspend Respondent from practice pending the final decision on the petition to
26 revoke probation or the accusation. This period of suspension will not apply to the reduction of
27 this probationary time period.

28 **17. Mental Health Examination.** Respondent shall, within 45 days of the

1 effective date of this Decision, have a mental health examination including psychological testing
2 as appropriate to determine her capability to perform the duties of a registered nurse. The
3 examination will be performed by a psychiatrist, psychologist or other licensed mental health
4 practitioner approved by the Board. The examining mental health practitioner will submit a
5 written report of that assessment and recommendations to the Board. All costs are the
6 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
7 result of the mental health examination will be instituted and followed by Respondent.

8 If Respondent is determined to be unable to practice safely as a registered nurse,
9 the licensed mental health care practitioner making this determination shall immediately notify
10 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
11 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
12 practice and may not resume practice until notified by the Board. During this period of
13 suspension, Respondent shall not engage in any practice for which a license issued by the Board
14 is required, until the Board has notified Respondent that a mental health determination permits
15 Respondent to resume practice. This period of suspension will not apply to the reduction of this
16 probationary time period.

17 If Respondent fails to have the above assessment submitted to the Board within
18 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
19 practice until notified by the Board. This period of suspension will not apply to the reduction of
20 this probationary time period. The Board may waive or postpone this suspension only if
21 significant, documented evidence of mitigation is provided. Such evidence must establish good
22 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
23 provided. Only one such waiver or extension may be permitted.

24 **18. Therapy or Counseling Program.** Respondent, at her expense, shall
25 participate in an on-going counseling program until such time as the Board releases her from this
26 requirement and only upon the recommendation of the counselor. Written progress reports from
27 the counselor will be required at various intervals.

28 ////

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 7-7-04



SHERI LOLENE SMITH,
a.k.a., Sheri Lolene Rose
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: July 8, 2004

BILL LOCKYER, Attorney General
of the State of California


TERRENCE M. MASON
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Statement of Issues No. 2003-295

1 BILL LOCKYER, Attorney General
of the State of California
2 TERRENCE MASON, State Bar No. 158935
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-6294
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2003-295

12 SHERI LOLENE SMITH,
13 a.k.a., SHERI LOLENE GABBERT
14 a.k.a., LOLENE SMITH,
15 a.k.a., S. LOLENE SMITH
16 a.k.a., WENDY LYNN PETERSON
17 a.k.a., LOLLY SMITH
18 a.k.a., LOLA SMITH
19 2129 S. Stevenson Ct.
20 Visalia, CA 93277

STATEMENT OF ISSUES

Respondent.

21 Complainant alleges:

PARTIES

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
23 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about June 13, 2001, the Board of Registered Nursing, Department
26 of Consumer Affairs received an application for a Registered Nurse License from Sheri Lolene
27 Smith, also known as, Sheri Lolene Gabbert, Lolene Smith, S. Lolene Smith, Wendy Lynn
28 Peterson, Lolly Smith, and Lola Smith (Respondent). On or about May 31, 2001, Sheri Lolene
Smith certified under penalty of perjury to the truthfulness of all statements, answers, and
representations in the application. The Board denied the application on September 5, 2002.

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1 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

2 "(4) Denial of licensure, revocation, suspension, restriction, or any other
3 disciplinary action against a health care professional license or certificate by another state or
4 territory of the United States, by any other government agency, or by another California health
5 care professional licensing board. A certified copy of the decision or judgment shall be
6 conclusive evidence of that action.

7 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
8 abetting the violating of, or conspiring to violate any provision or term of this chapter [the
9 Nursing Practice Act] or regulations adopted pursuant to it.

10 "(f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of the
12 conviction shall be conclusive evidence thereof.

13 7. Section 2762 of the Code states:

14 "In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
16 under this chapter to do any of the following:

17 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
18 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
19 or administer to another, any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
21 defined in Section 4022.

22 "(b) Use any controlled substance as defined in Division 10 (commencing with
23 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
24 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
25 injurious to himself or herself, any other person, or the public or to the extent that such use
26 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
27 license.

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1 "(c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of this
3 section, or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof.

6 FIRST CAUSE FOR DENIAL OF APPLICATION

7 (Conviction of a Crime)

8 8. Respondent's application is subject to denial under sections 480(a)(1) and
9 2671(f), in that Respondent has been convicted of a crime substantially related to the
10 qualifications, functions or duties of a registered nurse, as follows:

11 A. On or about February 26, 1999, Respondent was convicted by the court on a
12 guilty plea for violating one count of Penal Code section 148.5(B) (falsely reporting a
13 misdemeanor or felony to police), a misdemeanor and one count of Penal Code section 148.9
14 (falsely representing self to peace officer), a misdemeanor, in the Superior Court of California,
15 County of Orange, North Justice Center, Case No. 98NF0712 (consolidated with Case No.
16 98WF2325), entitled *The People of the State of California v. Sheri Lolene Smith, aka Lolly*
17 *Smith, Wendy Lynn Peterson, and Lola Smith.*

18 B. The circumstances surrounding the conviction are that on or about August
19 8, 1998, Respondent willfully and unlawfully reported a misdemeanor or felony to a peace officer
20 with knowledge that such report was false. In addition, Respondent falsely represented and
21 identified himself as another person and as a fictitious person to a peace officer, upon a lawful
22 detention and arrest, in order to evade the process of the court and to evade the proper
23 identification of the person by the investigating officer.

24 C. On or about September 21, 1998, Respondent was convicted by the court on
25 a guilty plea for violating Penal Code section 487(A) (grand theft), a misdemeanor, in the
26 Superior Court of California, County of Orange, Case No. IR98HM05381, entitled *The People of*
27 *the State of California v. Sheri Lolene Smith.*

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1 D. The circumstances surrounding the conviction are that on or about
2 September 17, 1998, Respondent willfully and unlawfully, took money, labor, personal property,
3 and real property of a value exceeding \$400.00 from P. Orteta, L. Orteta, & J. Villela.

4 E. On or about January 23, 1996, Respondent was convicted by the court on a
5 guilty plea for possession of a controlled substance (58-37-8(2) (a) (i) UCA), a third degree
6 felony, in the Second Judicial District Court, Davis County, State of Utah, Case No. 951700975,
7 entitled, *The People of the State of Utah v. Sheri Lolene Smith*.

8 F. The circumstances surrounding the conviction are that on or about October
9 20, 1995, Respondent knowingly and intentionally possessed or used a controlled substance, to
10 wit: methadone.

11 G. In or about 1978, Respondent, by her own admission, was 18 years old
12 when she was convicted on a charge for forged prescriptions.

13 SECOND CAUSE FOR DENIAL OF APPLICATION

14 (Discipline of Utah Registered Nurse License)

15 9. Respondent's application is subject to denial under sections 2761(a)(4) for
16 unprofessional conduct, as defined in sections 480(a)(1), 480(2), 480(3), 2761(a), 2761(f),
17 2762(a), 2762(b), and 2762(c), as follows:

18 A. On October 17, 1996, the Division of Occupational and Professional
19 Licensing of the Department of Commerce, of the State of Utah, under Case No. DOPL-95-289,
20 In the Matter of the License of Sheri Lolene Smith to Practice as a Registered Nurse in the State
21 of Utah, placed Respondent's license on indefinite probation, for engaging in unprofessional
22 conduct, in that Respondent removed 23 Methadone tablets from a prescription card and replaced
23 that medication with other tablets having similar appearance. In addition, Respondent had twice
24 diverted such medication from a patient entrusted to her care, without regard to the patient's need
25 for that medication.

26 B. On October 27, 1999, the Division of Occupational and Professional
27 Licensing of the Department of Commerce, of the State of Utah, under Case No. DOPL-99-74, In
28 the Matter of the License of Sheri Lolene Smith to Practice as Registered Nurse in the State of

1 Utah, stayed Respondent's license to practice as a registered nurse for not less than one (1) year,
2 based on Respondent's several conviction cases and failure to comply with terms and conditions.

3 C. On October 4, 2001, the Division's Order, dated January 31, 2001, under
4 Case No. DOPL-99-74, In the Matter of the License of Sheri Lolene Smith to Practice as a
5 Registered Nurse in the State of Utah, was amended, based on the Memorandum of
6 Understanding, under Case No. DOPL-2001-16, in that Respondent submitted an application for
7 re-licensure as a registered nurse on or about November 27, 2000. The Stipulations and Order in
8 Case No. DOPL-99-74, suspended Respondent's license for not less than a year and Respondent
9 admitted that she failed to comply with the terms and conditions of Case No. DOPL-95-289.

10 THIRD CAUSE FOR DENIAL OF APPLICATION

11 (Failure to Comply with the Discipline of Utah Registered Nurse License)

12 10. Respondent's application is subject to denial under sections 2761(a)(4) for
13 unprofessional conduct, as defined in section 2761(d), in that Respondent violated the discipline
14 imposed by the Division of Occupational and Professional Licensing, of the Department of
15 Commerce, of the State of Utah, by failing to notify the Division of her additional convictions, as
16 more fully set forth, in paragraph 8 above.

17 FOURTH CAUSE FOR DENIAL OF APPLICATION

18 (Unprofessional Conduct)

19 11. Respondent's application is subject to denial under sections 2761(a) and
20 480(a)(3) for unprofessional conduct, in that on or about December 2, 1992, Respondent was
21 placed on diversion for making or uttering forged prescriptions (58-37-8.66), a third degree
22 felony, in the Second District, County of Weber, State of Utah, Case No. 921003240, entitled,
23 *The People of the State of Utah v. Sheri Lolene Smith*, which if done by a licentiate of the
24 profession would be grounds for suspension or revocation of a license.

25 12. Grounds further exist to deny Respondent's application under Business
26 and Professions Code section 480(a)(3) in that Respondent committed acts as described in
27 paragraph 8 above. Paragraph 8 is incorporated herein as if fully set forth, which constitutes
28 grounds for discipline against a licensee under Business and Professions Code section 2761(f).


1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Denying the application of Sheri Lolene Smith for a Registered Nurse
5 License;

6 2. Taking such other and further action as deemed necessary and proper.

7 DATED: 6/17/03

8
9 
10 RUTH ANN TERRY, M.P.H., R.N.
11 Executive Officer
12 Board of Registered Nursing
13 Department of Consumer Affairs
14 State of California
15 Complainant

13 03579110-SD2002AD0751
14 jz